RECEIVED
Mar 14 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC .....Respondents

FINAL BRIEF OF APPELLANT

K. Michael Barfield (S.C. Bar No. 69400)
John W. Fletcher (S.C. Bar No. 69550)
BARNWELL WHALEY PATTERSON & HELMS, LLC
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Appellant Virgie C. Simmons Family, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES/RULES/REGULATIONS

OTHER MATERIALS

STATEMENT OF ISSUES ON APPEAL

SUGGESTED ANSWER TO ALL QUESTIONS: *Yes.*

1. **Did the trial judge err in finding that there was not a meeting of the minds when the original business lease unambiguously required that the lessee return the leased premises to its original condition?**

2. **Did the trial judge err in looking at whether there was a meeting of the minds between Simmons and Respondents with regard to the restoration of the premises to its original condition, where the original lease was between Simmons and Easy Trade?**

3. **Did the trial judge err in finding that Appellant had not presented evidence regarding pre-lease condition of the property?**

4. **Did the trial judge err in finding that Appellant had not presented evidence regarding the modifications that Easy Trade made to the property?**

5. **Did Respondent Limehouse remain bound to the Business Lease despite its alleged assignment to Limetrade?**

STATEMENT OF THE CASE

A. Procedural History

Appellant Virgie C. Simmons Family, LLC ("Simmons") filed this action on December 3, 2019, alleging breach of contract against Respondents Limetrade, LLC ("Limetrade") and Limehouse Produce, LLC[1] ("Limehouse") arising out of a lease agreement. (*See* R. pp. 23-27). On March 10, 2022, Appellant Simmons withdrew its request for a jury trial, with Respondents' Consent. (*See* R. p. 35). On March 11, 2022, the trial court entered a Consent Order for Reference to the Master. (*See* R. pp. 1-3). The case came to trial before the Honorable James Chellis, Master-in-Equity on October 9, 2023 and November 27, 2023.

On April 5, 2024, the Court entered its Final Order following trial, dismissing the claims of Simmons and entering judgment of Respondents. (*See* R. pp. 11-19). The Master-in-Equity specifically stated in the Final Order:

> Despite the clarity of the Remedy Clause after the tenant has vacated and has remedied, as it understood the Remedy Clause meant, the Plaintiff failed to produce sufficient evidence at the outset of the Lease what the Remedy Clause meant. It follows, that since the Defendants are only provided the clarity of the Plaintiff's Remedy Clause after the fact, the Defendant could not have assented to the Remedy Clause from the outset of its tenancy. Therefore, the Plaintiff's understanding of the Remedy Clause cannot be enforced against the Defendant. . . .
>
> The Plaintiff and the Defendants did not have mutual assent to all of the terms of the Contract in that the Remedy Clause specifically lacked mutual assent. "

(*See* R. p. 17).

---

[1] Respondents' May 30, 2024, Motion to Dismiss this appeal in part argued that Limehouse Produce, LLC was not the entity named in the original complaint: "The Plaintiffs Complaint is made to Limetrade, LLC and Limehouse Produce Company, Inc. Limehouse Produce, LLC is the new ownership entity established on December 21, 2023, and is not involved in this litigation." Appellant Lessor responded by pointing out, *inter alia*: (a) Limehouse Produce, LLC and Limehouse Produce, Inc. are one and the same, with Limehouse Produce, LLC being Limehouse Produce, Inc.'s current name after being converted to a limited liability company; and (b) the trial court's April 5, 2024, Final Order—which is a subject of this appeal—uses the same caption as that used in the Notice of Appeal. On July 8, 2024, this Court denied Respondents' Motion to Dismiss, "conforming the caption of this appeal with the caption of the circuit court's final order."

On April 10, 2024, Simmons filed a timely Notice of Motion and Motion to Alter, Amend, or Reconsider. (*See* R. p. 36). Judge Chellis denied that Motion by Form 4 Order on April 22, 2024. (*See* April 22, 2024 Form 4 Order). On May 21, 2024, Simmons filed a timely Notice of Appeal, which is presently at issue before this Court. (*See* R. pp. 37-52).

B. Factual Background

On or about April 22, 2004, Appellant Simmons entered into a Business Lease with Easy Tray, LLC ("Easy Tray" or "Lessee"), which is not a party to this lawsuit. (*See generally* R. pp. 485-99). Under the Business Lease, Simmons agreed to lease Easy Tray approximately 31,888 square feet of space in 4791 Trade Street, in North Charleston, South Carolina ("Leased Premises"). (*See id.*). The Business Lease identified that the purpose for the lease as " Vegetable Processing and Distribution Plant." (*See* R. p. 485). The Business Lease states that it "shall be binding upon the Simmons and the Lessee and their respective heirs, successors, assigns and personal representatives and shall inure to the benefit of the same." (*See* R. p. 490 ¶ 20). The initial term of the Business Lease was for four (4) years, ending on June 3, 2008. (*See* R. p. 485). Easy Tray was also "granted the option of extending the term of this Lease for a period of two (2), three (3) year options," *i.e.,* until June 30, 2014 (*See* R. p. 486 ¶ 3).

Easy Tray, to accommodate its planned vegetable processing plant, made massive modifications to the floor of the Leased Premises. (*See* R. pp. 69:23-70:19). Simmons' and Easy Tray's Business Lease included the following provision (Section 14) permitting Easy Tray to modify the floor, but requiring that Easy Tray restore the floor to its original condition at the end of the lease:

> Lessee at its own cost and expense shall fully equip the Demised Premises with furniture, operating equipment, and any other equipment necessary for the proper operation of Lessee's business. ***Modifications to the floors and special electrical and lighting requirements contemplated by the Lessee and acknowledged by Lessor that are necessary to operate the Lessee's business will be made at the Lessee's expense*** except for the "step-down" transformer required for other tenants. Lessor request that ***floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted***. . . . Lessee shall not do any alterations or construction work or install any equipment without first obtaining Lessor's written

> approval and consent, which consent shall not be unreasonably withheld or delayed, Lessee shall present to Lessor plans and specifications for such work at the time approval is sought.

(*See* R. p. 488 ¶ 14 (emphasis added)).

Easy Tray operated in the Leased Premises for about 24 months. (*See* R. p. 75:17-19). Ultimately, Easy Tray assigned the Business Lease, which it was contractually permitted to do. (*See* R. p. 491 ¶ 27). By Assignment dated March 3, 2007—before the end of the original term of the Business Lease—Easy Tray "assigned all of its right, title and interest in said Business Lease to [Respondent] Limehouse Produce, Inc." (*See* R. pp. 500). Less than two months later, under a May 24, 2007 Assignment Limetrade agreed to assume "all obligations of [Limehouse] arising or accruing on or after the date hereof under the Business Lease, and shall make all payments and keep and perform all conditions and covenants of the Business Lease in the same manner as if Assignee [Limetrade] were the original lessee." (*See* R. p. 500 ¶ 3 (emphasis added)). Limetrade agreed "to assume ***all*** of the rights, duties ***and liabilities of said [Business] Lease***." (See id., at 1 (emphasis added)). Appellant consented to the Assignment of the Business Lease from Limehouse to Limetrade. (*See* R. p. 503).

In 2011, Appellant and Limetrade executed an Option to Renew Business Lease, which amended the original Business Lease (between Appellant and Easy Tray) to grant Limetrade "the option of extending the term of this Lease for a period of four (4), three (3) year options by giving one hundred twenty (120) days written notice to LESSOR prior to the expiration of the current term of this Lease. There shall be a two (2%) percent increase in annual rent with each option exercised." (*See* R. p. 508). On March 22, 2014, Simmons and Limetrade entered into Lease Extension and Renewal, which extended the Business Lease until June 30, 2016, with the possibility of three (3) one-year extensions. (*See* R. p. 509).

Compared to Easy Tray, Limetrade did a significantly higher volume of business in the Leased Premises. (*See* R. p. 84:10-16 ("The amount of product that was coming and going daily was considerably more.")). Limetrade retained the refrigeration equipment that Easy Tray had installed in the Leased Premises. (*See* R. p. 85:7-10). It removed the vegetable wash facility that

Easy Tray had constructed and used the Leased Premises for the distribution of vegetables. (*See* R. pp. 84:17-85:6). Limetrade also constructed bollards throughout the Leased Premises. (*See* R. p. 85:11-21).

Limetrade occupied the Leased Premises until 2017. (*See* R. p. 89:11-22). Limetrade informed Simmons that it was vacating the Leased Premises and moving to its own facility. (*See* R. pp. 101:24-102:12). When Limetrade left the Leased Premises, it had not returned to floor back to its pre-Business Lease condition. (*See* R. pp. 102:17-103:4). In fact, when Limetrade vacated the Leased Premises, it had not returned it to the "pristine" condition it had been in prior to the original Business Lease to Easy Tray.

For example, rather than properly address the drainage trenches, Limetrade did an insufficient job, without reinforcing the repairs or removing the drain pipes that had been installed: "Basically, they had a contractor come in, remove the metal grates off the top of the drains, and just pump it full of concrete. And basically, took the back of a shovel and just dragged it across the finish; and that's how they left it." (*See* R. pp. 104:18-105:18). Additionally, rather than remove the over 1,000 wedge anchors, Limetrade ground them down rather than core drilling and removing them (and backfilling with epoxy); as a result, Limetrade left much of the anchors in the floor posing tripping hazards. (*See* R. pp. 106:3-107:20). Additionally, sawed-off pipes sticking out of the floor remained unaddressed. (*See* R. p. 108:8-15).

When Limetrade left the Leased Premises, "the floor was a mess" and in an less rentable condition. (*See* R. p. 112:6-12). Simmons was forced to mitigate its harm by renting the Leased Premises to a tenant that was willing to accept the floor not in its original condition. (*See* R. pp. 112:6-113:9).

At the expiration of that tenant's lease, Simmons was forced to replace the floor to make the premises acceptable to a new tenant. (*See id.*). Mr. Simmons testified about the poor condition of the floor after Respondents' presence:

> The cracks in the floor. They basically wanted to make sure that the slab was in usable shape. The last thing they wanted was a big forklift with a heavy load going

> through the floor. Also, the floor drains pushing those down, because it was very clear that they were already being pushed down from weight loads. So the area underneath the refrigerator cooler was the area that had to come out. That's where the ThunderStuds were, the majority of the cracking. The drains were in that area, the bollards were in that area. So it was pretty much confined to the refrigerator/freezer unit.

(*See* R. pp. 117:22-118:8). He further testified:

> The area that was bad had to be removed and replaced. So I had to make a decision on behalf of the LLC to move forward with having the slab replaced. The slab everywhere where the cooler refrigeration unit was installed was removed. And the rest of the slab, other than a couple spots, was not removed. As it didn't need to be.

(*See* R. pp. 116:20-117:1). All told, approximately 18,000 square feet of the floor had to be replaced. (*See* R. p. 117:2-4). Appellant Simmons' cost of doing this work was over $423,000. (*See* R. pp. 123:7-12, 320:24-322:7, 664-78).

ARGUMENTS

A. Standard of Review

"In an action at law, tried without a jury, [this Court's] scope of review extends to the correction of errors of law." *Grant v. State*, 395 S.C. 225, 228, 717 S.E.2d 96, 98 (Ct. App. 2011) (*citing Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000)). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

B. The Trial Judge Erred in Finding That There Was No Meeting of the Minds Between Simmons and Respondents, and This Court Should Reverse the Final Order of the Trial Court.

1. The Business Lease Plainly and Unambiguously Required that Respondents, as the Assignees of Easy Tray, Return the Leased Premises to Its Pre-Business Lease Condition.

Judge Chellis' Final Order at issue in this appeal further based his holding on his construction of the parties' agreements:

> In this Court's view, after consideration of all of the documentary evidence, the testimony of the parties and their respective witnesses, the facts bear out that the parties lacked mutual assent to the Remedy Clause (defined below) of the Lease on which this case turns. In other words, the Plaintiff's take on the remedy it contemplated by the Lease upon termination is one result and the Defendant's take on the remedy is quite another result. Where there is a lack of mutual assent to all the terms of a contract in South Carolina, the contract cannot be enforced.

(*See* R. p. 12). Judge Chellis concluded:

> Despite the clarity of the Remedy Clause after the tenant has vacated and has remedied, as it understood the Remedy Clause meant, the Plaintiff failed to produce sufficient evidence at the outset of the Lease what the Remedy Clause meant. It follows, that since the Defendants are only provided the clarity of the Plaintiff's Remedy Clause after the fact, the Defendant could not have assented to the Remedy Clause from the outset of its tenancy. Therefore, the Plaintiff's understanding of the Remedy Clause cannot be enforced against the Defendant.

(*See* R. p. 17). For the reasons that follow, the plain language of the relevant contractual documents made clear that Limehouse and Limetrade undertook to restore the Leased Premises to the condition in which Easy Tray originally rented it. There is no failure of assent or absence of a "meeting of the minds."

Simmons and Easy Tray's Business Lease—which is the underlying agreement behind the claims in this case—unambiguously permitted Easy Tray to modify the floor of the Leased Premises; however, it also mandated that Easy Tray restore the floor to its original condition at the end of the Business Lease:

> ***Modifications to the floors and special electrical and lighting requirements contemplated by the Lessee and acknowledged by Lessor that are necessary to operate the Lessee's business will be made at the Lessee's expense*** . . . Lessor request that ***floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted***.

(*See* R. p. 488 ¶ 14 (emphasis added)). Mr. Simmons testified that this provision was included in the original Business Lease because of Easy Tray's anticipated "major cutting of the slab to install the floor drain system." (*See* R. p. 71:16-20).

From the face of the Business Lease, it is plain and unambiguous that Simmons and Easy Tray agreed that: (a) Easy Tray could make modifications to the Leased Premises; and (b) Easy Tray would restore the premises to its original condition.

2. The Trial Judge Improperly Looked to the "Meeting of the Minds" Between Simmons and Respondents, Rather Than the Meeting of the Minds in the Original Business Lease.

Easy Tray operated in the Leased Premises for about 24 months under the original Business Lease. (*See* R. p. 75:17-19). The Business Lease permitted Easy Tray to assign its rights and duties under the Business Lease under certain circumstances:

> Lessee shall not assign this Lease, nor sublet the Premises or any part thereof, nor use the same or any part thereof, nor permit the same or any part thereof, to be used for any other purpose other than as above stipulated, nor make any alterations therein, or additions thereto, without the written consent of the Lessor, which approval shall not be unreasonably withheld or delayed. Any attempted assignment or subletting of the Premises or any part thereof without the Lessor's consent shall

> be void and shall at the option of the Lessor terminate this Lease. Consent by Lessor to any one (1) assignment or subletting shall not release the Lessee from its primary liability under this Lease, and Lessor's consent to one (1) assignment, subletting or occupation or use of the Premises by other parties shall not be deemed a consent to other subleases, assignments or occupations or use by other parties. . . . Lessee does hereby absolutely guarantee the payment of, and covenants to pay the Rent and other sums hereunder until the expiration of the Term hereof . . . .

(*See* R. p. 491 ¶ 27). It appears[2] that, by Assignment dated March 3, 2007—before the end of the original term of the Business Lease—Easy Tray "assigned all of its right, title and interest in said Business Lease to [Respondent] Limehouse Produce, Inc." (*See* R. p. 501). "[B]y Consent to Assignment dated March 1, 2007, Simmons acknowledged its consent to this assignment." (*See id.*). At that time, Simmons made clear to Limehouse (through its attorney) that its assumption of the Business Lease "include[d] the obligation to restore the floor to the pre Easy Tray lease condition per the terms of Easy Tray's [Business L]ease." (*See* R. p. 79:1-7).

Less than two months later, pursuant to a May 24, 2007, Assignment between Limetrade and Limehouse, Limetrade agreed to assume "all obligations of Assignor [Limehouse] arising or accruing on or after the date hereof under the Business Lease, and shall make all payments and keep and ***perform all conditions and covenants of the Business Lease in the same manner as if Assignee [Limetrade] were the original lessee thereunder***."[3] (*See* R. p. 500 ¶ 3 (emphasis added)). In that Assignment, Limetrade expressed its desire "to assume ***all*** of the rights, duties ***and liabilities of said [Business] Lease***." (*See* R. p. 500 (emphasis added)). Appellant consented to the Assignment of the Business Lease from Limehouse to Limetrade. (*See* R. p. 503). Nothing in this Assignment released Limehouse from its original assumption of duties under the Business Lease.

---

[2] Unfortunately, neither Lessor nor Respondents have been able to locate a copy of the original assignment of the Business Lease from Easy Tray to Limehouse Produce, Inc. However, there has been no dispute that Easy Tray made a full assignment of the Business Lease to Limehouse Produce, Inc. as recited in the subsequent assignment to Limetrade, LLC.

[3] The reason for this assignment was that Limehouse created Limetrade to operate business at the Leased Premises. (*See* R. p. 78:5-9).

In 2011, Appellant and Limetrade executed an Option to Renew Business Lease, which amended the original Business Lease (between Appellant and Easy Tray) to grant Limetrade "the option of extending the term of this Lease for a period of four (4), three (3) year options by giving one hundred twenty (120) days written notice to LESSOR prior to the expiration of the current term of this Lease. There shall be a two (2%) percent increase in annual rent with each option exercised." (See R. p. 508). On March 22, 2014, Simmons and Limetrade entered into Lease Extension and Renewal, which extended the Business Lease until June 30, 2016, with the possibility of three (3) one-year extensions. (*See* R. p. 509). Limetrade further promised therein that "***[a]ll other terms and conditions of the Lease***, including rent and rent increases shall remain unchanged." (*See id.* (emphasis added)).

"An assignee stands in the shoes of its assignor." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013); *accord Chet Adams Co. v. James F. Pedersen Co.*, 308 S.C. 410, 413, 418 S.E.2d 337, 338 (Ct. App. 1992) ("Generally, the assignee of a non-negotiable chose in action takes it subject to all equities and defenses which could have been set up against the assignor at the time of the assignment."); *Johnson v. Bank of Am., N.A.*, No. 3:09-1600-JFA, 2010 U.S. Dist. LEXIS 38080, at *8 (D.S.C. Apr. 15, 2010) ("As an initial matter, the court notes that an assignee or delegate stands in the shoes of the assignor or delegator. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 ([Ct.] App. 2007). Accordingly, if the agreement allows or requires BofA to act or not act in a certain way, it also allows or requires Fiserv to conduct itself in the same manner.").

The plain language of the agreements between the parties makes clear that Limehouse and Limetrade agreed to an assignment/delegation of Easy Tray's rights/obligations under the original Business Lease:

- Easy Tray agreed in the original Business Lease to restore the Leased Premises to its pre-lease condition;
- Easy Tray assigned all of its rights and duties under the Business Lease—including the duty to restore the Leased Premises—to Limehouse;

- Limehouse assigned all of its rights and duties under the Business Lease—including the duty to restore the Lease Premises—to Limetrade;

We do not have to speculate about a meeting of the minds. The agreements are clear that Respondents explicitly intended to place themselves in Easy Tray's shoes under the Business Lease.[4] Respondents cannot challenge that they agreed to bind themselves to the Business Lease and unambiguously expressed their intention to do so. In doing so, Respondents agreed to be bound by the Section 14 that is at issue in this appeal. Moreover, Easy Tray's knowledge of both the original condition of the floor and the modifications Easy Tray made to the floor must be imputed to Respondents, as assignees/delegates. If Respondents had any question about what Easy Tray had agreed to in Section 14, the time to raise that issue was ***before*** signing the assignments, not after.

Judge Chellis' focus on a "meeting of the minds" is misplaced because the assignments at issue were not "novations" that created entirely new contracts (discharging the original Business Lease):

> "A novation is an agreement between all parties concerned for the substitution of a new obligation between the parties with the intent to extinguish the old obligation. The burden of proving novation is on the party asserting it." *Wayne Dalton Corp. v. Acme Doors, Inc.*, 302 S.C. 93, 96, 394 S.E.2d 5, 7 (Ct. App. 1990) (citation omitted). "The circumstances attending the transaction alleged to be a novation must show the intention to substitute a new obligation in place of the existing one." *Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 262, 199 S.E.2d 719, 722 (1973).

See Wellman, Inc. v. Square D Co., 366 S.C. 61, 72, 620 S.E.2d 86, 92 (Ct. App. 2005). The language of the assignments is clear that new contractual obligations had not been made; to the contrary, the assignments merely transferred already-existing obligations under the Business Lease

[4] There is no dispute that there was a meeting of the minds between Easy Tray and Simmons with regard to the restoration of the Leased Premises, particularly the floor. The Business Lease clearly and unambiguously required that Easy Trade remove and repair all modifications it made to the floor. Easy Trade's knowledge of this provision must be imputed to Respondents, who assumed "all obligations of" the Business Lease and agreed to "keep and perform all conditions and covenants of the Business Lease ***in the same manner as if Assignee were the original lessee thereunder***." (*See* R. p. 500).

to Respondents. The relevant "meeting of the minds" with regard to the condition of the Leased Premises occurred in April 2004 when Simmons and Easy Tray executed the Business Lease.

In light of the clear and unambiguous contracts, under which Respondents agreed to fulfill Easy Tray's duties under the Business Lease, Judge Chellis finding that there was no "meeting of the minds" with Respondents is in error.

C. The Court Erred in Finding that Appellant Simmons Failed to Present Evidence Regarding the Pre-Lease Condition of the Leased Premises and the Nature of Easy Tray's Modifications.

"A lease agreement is a contract." *Middleton v. Eubank*, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010). "Where an agreement is clear and capable of legal interpretation, a court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Park Regency, LLC v. R&D Devel. of the Carolinas, LLC*, 402 S.C. 401, 412-413, 741 S.E.2d 528, 534 (Ct. App. 2012). "It is not the function of the court to rewrite contracts for parties." *ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct.App.2011). "The best evidence of the parties' intent is the contract's plain language." *North Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015) (citation omitted).

Simmons and Easy Tray's Business Lease—to which Respondents ultimately became parties by assignments—permitted Easy Tray to modify the floor, but required it to restore the floor to its original condition at the end of the lease. (*See* R. p. 488 ¶ 14 (emphasis added) ("Lessor request that floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted."). Judge Chellis concluded in his Final Order that Simmons failed to present any evidence of: (a) the condition of the leased premises prior to the Business Lease with Easy Tray; and (b) the modifications that Easy Tray made to the Leased Premises. Notably, Judge Chellis did not make a factual determination that Simmons' evidence was not credible or competent. He expressly based his decision on the mistaken perception that there was ***no*** evidence

presented on those issues. For the reasons that follow, the Court should reverse Judge Chellis' Final Order.

1. Simmons Presented Evidence to the Trial Judge Concerning the Pre-Lease Condition of the Property.

Judge Chellis' Final Order stated that Simmons had "produced no evidence of the condition of the concrete slab of the demised property immediately prior to these modifications [by Easy Tray]." (*See* R. pp. 14-15). This is not correct. In fact, Simmons presented substantial evidence showing the pre-Business Lease condition of the floor. As a result, Judge Chellis' order is erroneous as both a matter of fact and law.

David A. Simmons testified that, when the Leased Premises were leased to Easy Tray, it was in "basically pristine or in its original condition." (*See* R. p. 79:8-13). He additionally confirmed that, when the Leased Premises were first leased to Easy Tray, there were no drains in the floor. (*See* R. p. 69:20-22). He further testified in detail:

> Q When you acquired that warehouse facility in the early '90s, what was the condition of the property?
>
> A It was in great shape.
>
> Q Okay. The warehouse? And can you describe what the warehouse looks like? I mean, I know we can all imagine a warehouse; but we're here generally to talk about a concrete slab, so can you maybe start from the slab up and just sorta describe the facility and the size of it?
>
> A Yes; it's a grate-high facility, concrete slab, tilt-up concrete panels, and a steel roof system.

(*See* R. p. 67:1-11). Under the floor of the Leased Premises—which was the original floor of the building—was a vapor barrier of plastic sheeting. (*See* R. pp. 97:19-98:10).

Bolstering Mr. Simmons' testimony about the original condition of the floor, another witness testified about the condition of the floor of the building in areas were not leased to Easy Tray (and, as a result, that Easy Tray did not modify):

> Q All right. Have you ever had occasion to observe the slab, the original slab, in the other half of the warehouse, the part that Limetrade had not occupied?

A Yes.

Q Okay. What is the condition of that slab to your observation?

A It was significantly better. There wasn't nearly the amount of cracking or patching or trench drains or anchors or anything like that in those areas.

Q Did you observe any water on the surface of the slab in those other portions?

A I did not

(*See* R. pp. 177:23-178:9).

Judge Chellis' Final Order did not address this evidence and did not state that he found it unbelievable or incompetent. He did not conclude that Mr. Simmons was not a credible witness. Rather, he explicitly stated that there was ***no evidence***. Contrary to Judge Chellis' Final Order, Simmons did, in fact, present evidence showing the pre-Business lease condition of the property. Respondents have not presented any evidence to the contrary. Thus, the undisputed evidence is that the floor of the Leased Premises was in "pristine" condition before Easy Tray modified it. Judge Chellis erred in concluding that there was no evidence on this issue.

2. Simmons Presented Evidence to the Trial Judge Concerning the Nature of the Modifications That Easy Tray Made to the Leased Premises.

Judge Chellis also concluded that Simmons had presented "no documentary evidence of the contemplated modifications described in Paragraph 14." (*See* R. p. 14).

Initially, Judge Chellis did not have a legal basis to require that Simmons prove Easy Tray's contemplated modifications via "documentary" evidence. This is not a situation where the best evidence rule would require proof by an original document. *See* S.C.R. Evid. 1002 ("To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."). "[I]ntroducing testimony is the functional equivalent of introducing evidence." *In re Care & Treatment of Campbell*, 427 S.C. 183, 192 n.2, 830 S.E.2d 14, 19 (2019); *accord Custom Performance Eng'g, Inc. v. American Indus. Grp., LLC*, No. 2024-UP-275, 2024 S.C. App. Unpub. LEXIS 271, at *7 (Ct. App. July 24, 2024) ("AMI also contends the record does not support the master's award of $8,694 for tooling

the original machine. We disagree. Adams's testimony that Custom Performance spent $8,694 for tooling the Original Machine supports this award."). To the extent Judge Chellis' Final Order is premised upon a requirement that Simmons prove the nature of the modifications to the Leased Premises through documentary evidence (photographs, etc.), he has erred. Simmons could prove these facts through the testimony of competent witnesses, which it did do.

Simmons proffered ample testamentary evidence that Easy Tray—to accommodate its planned vegetable processing plant—made substantial changes to the floor of the Leased Premises. For example, Mr. Simmons testified:

> Q All right. So Easy Tray's running this rather-large produce wash station. What, if anything, did they do to try and take that water out of the facility rather than having it sort of sit on top of the floor?
>
> A Right. They -- basically, they cut the drain systems in throughout the cooler. But the floor was not sloping, it was flat.
>
> Q Okay. And you say they cut drain systems. Can you kinda describe for The Court what that looked like and the relative dimensions of those drains?
>
> A Yes. And this is approximately. An approximate measurement. They soft cut a slab throughout the cooler. Roughly two, two and a half feet wide. And then they put a factory-designed composite drain system in, which was probably about 8 inches wide, 12 inches, 16 inches deep, with a metal grate on it. And then they poured concrete back around it with no structural support, just buried the drain into the dirt, and then just poured concrete back. Did not install any rebar or any reinforcement. Approximately 350 linear feet of drain. So it was teed off in a lot of different places and it was connected into the sanitary sewer in multiple locations.

(*See* R. pp. 69:23-70:19). The reason Simmons included Section 14 in the Business lease was that it "know they [Easy Trade] were gonna have to put the trench drains in, so we added a clause in our lease that the floor had to be restored at the termination of the lease back to its original condition." (*See* R. pp. 70:20-71:1).

Simmons' Trial Exhibit 17 (R. p. 663) depicted a filled-in trench showing the size and location of one of the drainage trenches:

In addition to significantly modifying and cutting the floor slab for drainage, Simmons presented evidence that Easy Tray also modified the floor slab by installing hundreds of "ThunderStuds" or wedge anchors in the concrete floor to anchor or protect equipment it was using:

> Q Other than simply placing that equipment on top of the floor, presumably up against one of the walls, did they install any hardware to anchor and/or protect that equipment from normal warehouse activities?
>
> A Yes. The refrigerator/freezer unit panels were anchored to the floor using what is called a ThunderStud or a wedge anchor. And then inside and out of the cooler, the tenant installed an angle iron that was also fastened with ThunderStuds, half-inch in diameter, about every 10 inches to keep their forklift from pushing pallets into the freezer wall. So it was a bumper system mounted to the concrete slab.
>
> JUDGE CHELLIS: How far was it out?
>
> THE WITNESS: About a foot, inside and out. . . .
>
> Q Okay. And what was the spacing of those anchor bolts along the floor?

A Every 16 inches.

(*See* R. p. 73:1-19). Easy Tray installed over a thousand of these anchors to the floor of the Leased Premises. (*See* R. p. 74:17-20). Simmons had no involvement with the placement of these anchors and, in fact, did not know Easy Tray had done so until they had already been installed. (*See* R. p. 75:7-16). Trial testimony revealed that these anchors "are not designed to come out" and can only be removed by core drilling them individually. (*See* R. p. 170:3-20).

Moreover, Simmons presented evidence that, when Limetrade left the Leased Premises, it had not returned to floor back to its pre-Business Lease condition:

> So when they finally moved out, they -- I don't know if they sold the refrigerator/freezer unit and equipment or they removed it, but somebody came in and removed it all, including the angle irons on the floor, the steel plates. Basically just lifted a lot of those up and took those. The refrigeration lines, electrical lines, water lines, water lines that were feeding into the cooler, everything was just cut off. No wires capped, no nothing, just cut and took it out and left. They did grind the ThunderStuds off somewhat to the concrete, but a lot of 'em were still sticking up and, you know, would be a tripping hazard; so that's when I wrote a letter to Andrea [Limehouse] about the condition of the space.

(*See* R. pp. 102:17-103:4). In fact, Mr. Simmons testified that Limetrade had, through its operations, caused further damage to the floor of the Leased Premises beyond what Easy Tray had done in making its modifications—which Simmons initially assisted in repairing:

> The -- there were some issues that would basically arise during their tenancy of the concrete basically crumbling in their pathways where they were running their fork trucks, near expansion joints, some near the floor drain systems. They were running over the floor drains with their equipment. Virgie C. Simmons Family, LLC, in the beginning was repairing some of those areas. And basically, Virgie C. Simmons Family was telling the Limehouses that, you know, we had water that was on the floor, it was getting, you know, into the slab. And basically, at some of the expansion joints in these pathways, it would over time pump up some liquid dirt. After -- for a good many -- I'll probably say five, six different times, we'd go in and patch some of these areas. Most of the time they'd come back. At that point in time, the Limehouses just started putting steel plates over 'em.

(*See* R. p. 90:5-20). Simmons made clear to Limetrade that it would have to start paying for such repairs itself. (*See* R. pp. 90:22-91:7). Additionally, Limetrade's actions caused significant cracks in the floor of the Leased Premises. (*See* R. pp. 91:2-92:3). These issues on the Leased Premises

were not present in the other 45% of the building, which was leased to other businesses and had the same concrete floor. (*See* R. pp. 99:20-101:23).

Respondents cannot seriously dispute that they were aware of their obligations to restore the Leased Premises from Easy Tray's modifications. In fact, Respondents' conduct has always recognized an obligation to remove modifications under Section 14. For example, on July 14, 2017, Andrea Limehouse wrote to David Simmons, noting that Respondents had filled the drains Easy Tray cut into the floor of the Lease Premises:

David,
I spoke to SCEG and they said they will bridge the coverage so there will not be a period without power.
I wish you had been more specific when we met with David Willis and complied when we asked for written list of your requests. I understand you were going out of town but if you remember I had a you repeatedly to meet before we vacated and we left the building 6/3/2017 so you have had plen time. I believe the drains were filled the week of 6/25/2017 almost three weeks ago so if you were dissatisfied I would have expected a more timely response.
I am copying David Willis as he was responsible for installing rebar and filling the drains.
Andrea

(*See* R. pp. 529-30). On July 25, 2017, Respondents' attorneys wrote to Simmons, essentially agreeing that Respondents were obligated to restore the floor to its original condition under Section 14 of the Business Lease:

Section 14 of the Lease, entitled "Improvements", deals with improvements and modifications which the Tenant was authorized to make to the Premises, and specifically authorized the Tenant to make "modifications to the floors and special electrical and lighting requirements". Section 14 further authorized the Tenant to make certain floor modifications. Of these authorized improvements, **only the floor modifications are required to be returned to their prior condition at Lease termination**. Specifically, Section 14 states that "Lessor request[s] that floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted".

It is my understanding that Limetrade, LLC has installed lighting superior to the original installation, filled in the floor drains, cleaned the floors and removed any ducting suspended from the roof rafters. Limetrade, LLC has not (and will not) repair concrete damage due to subsidence from engineering issues with the Premises, or make any of the wish list of repairs detailed in your emails below.

(*See* R. p. 531).

Consistent with this, Andrea Limehouse testified that respondents undertook at least some steps in an effort to restore the floor's condition:

> Q. Well, let's come at it from this way. You did, in fact, undertake to one degree or another to repair the floor, did you not?
>
> A. I repaired the subsidence, and I filled the drains.
>
> Q. You had Mr. Willis fill the drains?
>
> A. And work on the subsidence.
>
> Q. I'm talking about after lease termination, you had --
>
> A. After lease termination.

(*See* R. p. 401:4-13).

In light of the foregoing, it is apparent that Judge Chellis erred in finding that Simmons failed to present any evidence of the modifications that Easy Tray made to the Leased Premises under the Business Lease. As a result, this Court should reverse the Final Order.

D. Limehouse Remained Liable Under the Business Lease, Notwithstanding Any Assignment to Limetrade

It is anticipated that Respondent Limehouse—as it did in its denied motion to dismiss the appeal against it—will argue that, even if Limetrade is liable to Simmons, Limehouse should not be because it assigned its rights and duties under the Business Lease to Limetrade. However, it is apparent that Limehouse—the original assignee from Easy Tray—remains still bound to its obligations under the Business Lease, despite its subsequent assignment of the Business Lease to Limetrade.

"Under settled contract law, a person may not simply delegate a duty to another and thereby extinguish his own liability to fully perform that duty." *Baker v. Weaver*, 279 S.C. 479, 482, 309 S.E.2d 770, 772 (Ct. App. 1983). Assignment of a lease does not act "to annul or change the defendant's obligations under the lease agreement." *Kornblum v. Henry E. Mangels Co.*, 167 So.2d 16, 19 (Fl. Dist. Ct. App. 1964). When a lease requires that the property be returned in the same condition as at the outset of the lease term, an assignee is liable for breach of the surrender obligation. *Ross Dress for Less, Inc. v. Makarios-Oregon, LLC*, 191 F. Supp. 3d 1189 (D. Or. 2016). The agreements are clear that Respondents agreed to fulfill Easy Tray's obligations under Section 14 of the Business Lease.

The facts of *Ross Dress for Less* mirror those at bar and are instructive. In that case, an assignee of a retail space spanning two buildings sought to return the premises to the two landlords. Various entities operated the retail store under separate leases for the respective buildings from the 1950's to 2014. The original tenant under the leases for the two buildings, Newberry, went into bankruptcy in 1992 and assigned its rights under those leases to Ross in 1996. The assigned leases included surrender obligations that required the tenant to return the premises in "good order, condition, and repair" at the end of the leases. Ross raised a number of arguments to avoid complying with these obligations, including the notion that the landlord waived the obligation during the earlier bankruptcy proceeding of the prior tenant. The Court rejected these arguments

and held Ross to be fully liable to comply with its obligation to surrender the space in "good order, condition, and repair." *See id.* at 1219-1224.

As discussed above, there is no evidence that the assignment to Limetrade was intended to be a "novation," creating a new contract and extinguishing Limehouse's duties. Rather, at all times, Respondents obligations to Simmons remained the same as Easy Tray's under the Business Lease. The relevant contractual documents do not express an intention to release Limehouse from its duties under the Business Lease. Therefore, Limehouse is a proper defendant in an action for breach of Business Lease.

CONCLUSION

For all of the foregoing reasons, the Court should reverse the trial judge's Final Order (and denial of Simmons' motion to alter, amend, or reconsider the Final Order).

BARNWELL WHALEY PATTERSON & HELMS, LLC

By: _____
K. Michael Barfield (S.C. Bar No. 69400)
John W. Fletcher (S.C. Bar No. 69550)
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Appellant Virgie C. Simmons Family, LLC

March 14, 2025

RECEIVED
Mar 14 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC.....Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC .....Respondents

RULE 211(b) CERTIFICATE

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

BARNWELL WHALEY PATTERSON & HELMS, LLC
By:_____
K. Michael Barfield (S.C. Bar No. 69400)
John W. Fletcher (S.C. Bar No. 69550)
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Appellant Virgie C. Simmons Family, LLC

March 14, 2025

RECEIVED
Mar 14 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217

Virgie C. Simmons Family, LLC..... Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC ..... Respondents

PROOF OF SERVICE OF FINAL BRIEF OF APPELLANT

I certify that I have served the Final Brief of Appellant on the above-referenced Respondents by email in accordance with the South Carolina Supreme Court's Order re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022) on March 14, 2025, addressed to their attorneys of record:

G. Hamlin O'Kelley, III
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Attorneys for Respondents Limetrade, LLC and Limehouse Produce, LLC

BARNWELL WHALEY PATTERSON & HELMS, LLC
By: _____
K. Michael Barfield (S.C. Bar No. 69400)
John W. Fletcher (S.C. Bar No. 69550)
P.O. Drawer H
211 King Street, Suite 300 (29401)
Charleston, SC 29402
Phone: (843) 577-7700
Attorneys for Appellant Virgie C. Simmons Family, LLC